

ESTTA Tracking number: **ESTTA98667**

Filing date: **09/11/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	NCH Corporation		
Entity	Corporation	Citizenship	Delaware
Address	2727 Chemsearch Blvd Irving, TX 75062 UNITED STATES		
Attorney information	Monty L. Ross and Mark R. Backofen Locke Liddell & Sapp LLP 2200 Ross Avenue Suite 2200 Dallas, TX 75201 UNITED STATES dadocket@lockeliddell.com, shall@lockeliddell.com Phone:214 740 8519		

Registration Subject to Cancellation

Registration No	2986750	Registration date	08/23/2005
Registrant	Tire Guard USA 2465 East Orangethrope Avenue Fullerton, CA 92831 UNITED STATES		
Goods/Services Subject to Cancellation	Class 009. First Use: 2001/06/00 , First Use In Commerce: 2001/06/00 Goods/Services: Tire pressure gauges		

Attachments	65448 00158 Petition for Cancellation.pdf (5 pages)(160639 bytes)
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Signature	/Mark R. Backofen/
Name	Mark R. Backofen
Date	09/11/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: U.S. Trademark Registration No. 2,986,750 for the mark TIRE GUARD and design, registered on August 23, 2005 on the Principal Register.

NCH CORPORATION,	§	
	§	
Petitioner,	§	Cancellation No. _____
	§	
v.	§	
	§	
TIRE GUARD USA,	§	
	§	
Registrant	§	
_____	§	

PETITION FOR CANCELLATION

NCH Corporation, ("Petitioner"), a corporation organized under the laws of the state of Delaware, having its principle place of business at 2727 Chemsearch Boulevard, Irving, Texas 75062, believes that it is or will be damaged by the continued registration of the mark TIRE GUARD and design shown in U.S. Trademark Registration No. 2,986,750, and hereby petitions to cancel the same under the provisions of the Trademark Act of 1946, §1092 of Title 15 of the United States Code.

Petitioner alleges the following as grounds for the cancellation:

1. The above-identified U.S. Trademark Registration No. 2,986,750 issued on August 23, 2005 on the Principal Register. To the best of Petitioner's knowledge, the current owner of the registration sought to be cancelled and its address are as follows:

Tire Guard USA
2465 East Orangethrope Ave.
Fullerton, CA 92831

(hereinafter Tire Guard USA is referred to as "Respondent"). Respondent's mark is registered for "tire pressure gauges" in International Class 009.

2. Petitioner developed and nationally markets a tire sealer and conditioner ("Petitioner's Goods") under the trademark TIRE GUARD ("Petitioner's Mark") and is the owner of said mark.

3. Long prior to Respondent's filing of the application which resulted in the registration sought to be cancelled, or the date on which Respondent can claim priority, Petitioner adopted and has continuously used, and is still using in interstate commerce, Petitioner's Mark on and in connection with the Petitioner's Goods.

4. Since at least as early as August 29, 1996, Petitioner has used Petitioner's Mark in interstate commerce in the marketing and sale of Petitioner's Goods, and the public has come to recognize Petitioner's Mark, TIRE GUARD, as signifying Petitioner and Petitioner's Goods.

5. Through such long and continuous use, Petitioner has developed substantial rights in Petitioner's Mark which has acquired significant value as an identifier of Petitioner's Goods. Petitioner, through advertising, marketing, and the sale of Petitioner's Goods under Petitioner's Mark, has built up, at great expense and effort, a valuable goodwill symbolized and embodied by Petitioner's Mark, which goodwill is likely to be irreparably diluted, damaged or destroyed by the Respondent's above-identified registration for the confusingly similar mark TIRE GUARD ("Respondent's Mark").

6. In June 2001, almost 5 years after Petitioner adopted and first began using Petitioner's Mark on and in connection with Petitioner's Goods, Respondent claims to have first begun use of Respondent's Mark in connection with "tire pressure gauges"

("Respondent's Goods"), filing its application that resulted in the registration sought to be cancelled on May 10, 2002. Respondent's U.S. Trademark Registration No. 2,986,750 for the mark TIRE GUARD and design, issued on August 23, 2005 for use with "tire pressure gauges," in International Class 009, claiming June 2001 as its date of first use in commerce.

7. On August 29, 2003, Petitioner filed an application with the United States Patent and Trademark Office to register Petitioner's Mark TIRE GUARD for use with "tire sealer and conditioner" in International Class 001. Petitioner's application received Serial Number 78/293,968 and claims August 29, 1996 as Petitioner's date of first use of Petitioner's Mark in commerce.

8. Petitioner's Application Serial No. 78/293,968 has been refused registration by the United States Patent and Trademark Office on the ground that Petitioner's Mark when used on or in connection with the goods identified therein, so resembles the mark shown in Registration No. 2,986,750 for the mark TIRE GUARD and design as to be likely to cause confusion, or to cause mistake, or to deceive.

9. Respondent's Mark, TIRE GUARD and design, the registration of which is sought to be cancelled, is confusingly similar to Petitioner's Mark, TIRE GUARD, in appearance, sound, connotation, and overall commercial impression. Indeed, except for the additional design in Respondent's Mark, Respondent's Mark and Petitioner's Mark are identical. As such, Respondent's Mark is likely to cause confusion, deception, and mistake within the meaning of Section 2(d) of the Trademark Act of 1946, all to Petitioner's irreparable damage and loss of its acquired goodwill symbolized by Petitioner's Mark.

10. Moreover, Respondent's Goods and Petitioner's Goods are very similar, both goods being identified as being used on or in connection with tires, and are therefore likely to

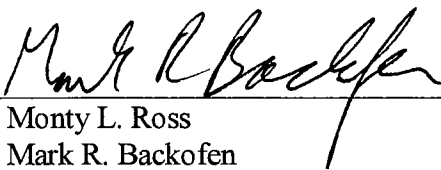
be sold through the same channels of trade to the same consumers. Consequently, consumers and prospective consumers of Petitioner's Goods, because of the confusingly similarity of Respondent's and Petitioner's Marks and the similarity of their respective goods, are likely to be confused, mistaken, or deceived into the belief, contrary to fact, that Respondent's Goods sold or intended to be sold under Respondent's Mark, emanate from or are in some way sponsored by or affiliated with Petitioner's Goods sold under Petitioner's Mark, all to Petitioner's irreparable damage through loss and/or dilution of that part of its goodwill which is symbolized by Petitioner's Mark.

11. On information and belief, Petitioner believes that Respondent's mark is not currently in use and that Respondent has no intent to resume use of its mark and therefore has abandoned its mark TIRE GUARD and design. Accordingly, Respondent's registration should be cancelled from the Principal Register due to abandonment of the registered mark.

12. You are hereby authorized to withdraw the filing fee for the present cancellation in the amount of \$300.00 from our Deposit Account No. 12-1781. Any additional fee for the proper filing of this Petition which may be due should be charged to our Deposit Account No. 12-1781.

WHEREFORE, Petitioner prays that registration of the mark shown in U.S. Trademark Registration No. 2,986,750 be cancelled and that this cancellation petition be sustained in favor of Petitioner.

Respectfully submitted,

By: 
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**ATTORNEYS FOR PETITIONER
NCH CORPORATION**

Date: September 11, 2006